UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.159
26 November 1993

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 159th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 November 1993, at 4 p.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.159/Add.1.

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GE.93-85496 (E)

The meeting was called to order at 4.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Initial report of Paraguay (continued) (CAT/C/12/Add.3)

1. At the invitation of the Chairman, Mr. Gauto (Paraguay) resumed his place at the Committee table.

2. Mr. GAUTO (Paraguay) said that his replies to the questions brought up at the previous meeting by members of the Committee would be based on what he himself knew and also on information that the Directorate-General for Human Rights in his country had faxed to him. Questions he was unable to answer or any additional questions that members of the Committee might put to him would receive a written reply as soon as possible.

3. With regard to the reform of the Penal Code, and particularly the position with respect to legislation concerning acts of torture (para. 11 of the report), the preliminary draft prepared by the National Commission on Codification and submitted to the National Congress had recently been withdrawn so that it could be supplemented and improved. The articles of the Constitution quoted in paragraphs 4 and 5 of the report were part of national positive law. The maximum period of detention prior to the initiation of an investigation was 24 hours (see art. 12, para. 5, of the Constitution quoted in para. 12 of the report); no one could be kept incommunicado save in exceptional circumstances on the order of the competent judicial authority (art. 12, para. 3, of the Constitution, para. 12 of the report).

4. Further details had been requested with regard to paragraph 15 of the report; the bicameral investigatory commission was very active and its mandate very broad, since it received complaints concerning various matters including torture, but also instances of misappropriation in the public administration, for example. However, although the bicameral commission had initiated a number of investigations and was collaborating with the Attorney General of the State in the clarification of certain facts, it had not yet handed down any decisions. Along with the press it was in any case one of the guarantors of a better protection of human rights.

5. With reference to paragraph 26 of the report and questions concerning the independence of the judiciary, he said that its independence was expressly recognized in the Constitution. The judiciary had a separate budget, equivalent to 3 per cent of the general national budget. The salaries of magistrates had been increased considerably; for example, as from January 1994, the judge of a court of first instance would receive a salary of 4.9 million guaranís; the salary of an appeal court judge would be equivalent to that of a minister, and the members of the Supreme Court would earn as much as the President of the Republic. Judges and magistrates were irremovable under article 252 of the Constitution. Article 262 of the Constitution created the Council of Justice whose task was to ensure impartiality in the appointment of judges; it would enter upon its duties as

soon as the act governing its functioning had been adopted. Although the judiciary could not be completely reformed from one day to the next, the situation was improving enormously.

6. In reply to a question about justices of the peace in connection with paragraph 27 of the report, he said that they had the same rights and obligations as other judges with regard to removability; they tried civil cases involving claims of a certain amount and in criminal proceedings they examined cases concerning offences committed within their jurisdiction before transmitting the relevant files to a higher court. Justices of the peace had exercised a political function in the past since they had been appointed by members of the executive; that situation had now changed.

7. With regard to the important points raised concerning the civil liability of the perpetrators of torture and that of the State (paras. 35 and 36 of the initial report), he said that State liability was established in article 17, paragraph 11, of the Constitution and subsidiary State liability in article 106 of the Constitution. No sentences had yet been pronounced in that regard. Civil proceedings must be initiated by the victim of the torture or his representatives. With reference to the question of prescription raised in paragraph 48 of the report, he said that no decision of a decisive nature had yet been handed down by a court of appeal. Despite the existence of prescription, the former Chief of the Police Investigations Department had been sentenced by a court of first instance to 30 years' imprisonment. The Constitution proclaimed the imprescriptibility of the crime of torture, but that principle was not always applied to offences committed under the previous regime. The trial of the former Chief of Police Investigations Department by a court of first instance had been strongly influenced by the pressure of public opinion which could not accept that a high official who had not only been in charge of the country's repressive machinery but had also participated personally in torture, should be acquitted. It was to be hoped that the court's decision would serve as a basis for punishing other officials at various levels and that the Court of Appeal would confirm their verdicts.

8. He went on to say that Paraguay had recognized the jurisdiction of the Inter-American Court of Human Rights and that proceedings could be initiated before the Inter-American Commission on Human Rights of the Organization of American States.

9. Noting that members of the Committee had inquired about the origin of the information contained in paragraph 103 of the report concerning the termination of the torture and cruel treatment of detainees and the dismantling of the apparatus or instruments used under the regime deposed in 1989, he explained that the facts in question had been reported by individuals and that the Government had closed down premises in which persons had been ill-treated.

10. Replying to the questions raised concerning paragraph 41 of the report which stated that torture had been general police practice prior to 1989, he said that there had been a major turnover of police officials. A new body had been set up, namely the national police, replacing the police of the capital and the police of rural areas under the previous regime. As a national body it was easier to supervise by the judiciary. The chief of the national police

had been replaced after being accused of misappropriation under the previous administration. Doctors who had participated in torture had not been identified - far less sentenced. He would transmit to his Government Mr. Sorensen's suggestions on the role and training of doctors with regard to torture.

11. While the situation in Paraguay was not yet perfect since the country was still severely affected by the legacy and after-effects of the previous regime, the present Government had the political will to rectify the situation with the help of Congress and the independent judiciary.

12. With reference to the incorporation of the Convention Against Torture into Paraguay's domestic legislation, he confirmed that that instrument had precedence over all the domestic laws provided for by the Constitution.

13. A question had been raised about the report of the Churches' Committee entitled "Tortura en Paraguay Pasado y Presente", which condemned the lack of vigilance shown by judges. He said he was not acquainted with the report and did not know whether his Government had seen it. However, he undertook to send a copy to the Paraguayan Ministry for Foreign Affairs and promised that it would be studied in detail by his Government. The Churches' Committee was an extremely important body in Paraguay and had been for a long time; it was one of the cornerstones of the efforts being made to ensure respect for human rights and was one of the bodies that had denounced a large number of atrocities in Paraguay.

14. He regretted having left some questions unanswered, particularly those concerning the conduct of prison officials and their duty to obey as well as the issue of "treason" set out in the Penal Code, and promised to transmit to the Committee written replies on those points and on any others the Committee might raise.

15. The CHAIRMAN noted that certain questions had not been answered in an exhaustive manner and invited members of the Committee to raise others if they so wished.

16. Mr. LORENZO thanked Mr. Gauto for his replies which, although incomplete on some points, did not skirt any difficulties. With regard to the question of prescription raised in the report of the Churches' Committee, he considered that if a first court rejected the principle of prescription - in the case that Mr. Gauto had just mentioned - the next court should do likewise. He would like the Paraguayan Government to confirm that in writing. More generally, he hoped that the Government would submit very detailed comments on each of the points raised in the report of the Churches' Committee that had just been published (November 1993), since that would provide a better understanding of the situation in Paraguay. The impartiality and exactitude of the Churches' Committee were unquestionable.

The public meeting rose at 4.55 p.m.